



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-999]

1,1,1,2 Tetrafluoroethane from the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement & Compliance, formerly Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, Office V, AD/CVD

Operations, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202.482.7906.

SUPPLEMENTARY INFORMATION:

The Petition

On October 22, 2013, the Department of Commerce (the “Department”) received a countervailing duty (“CVD”) petition concerning imports of 1,1,1,2 Tetrafluoroethane (“tetrafluoroethane”) from the People’s Republic of China (“PRC”), filed in proper form by Mexichem Fluor, Inc. (“Petitioner”), domestic producers of tetrafluoroethane. The CVD petition was accompanied by an antidumping duty (“AD”) petition concerning imports of tetrafluoroethane from the PRC.<sup>1</sup> On October 25 and November 6, 2013, the Department requested additional information and clarification of certain areas of the Petition, and on October

---

<sup>1</sup> See “Petition for the Imposition of Antidumping and Countervailing Duties on 1,1,1,2 Tetrafluoroethane from the People’s Republic of China, dated October 22, 2013 (hereafter referred to as the “Petition”).

29 and November 8, 2013, respectively, Petitioner filed a response to each request.<sup>2</sup>

Additionally, on November 7, 2013, Petitioner filed a response to the Department's November 6, 2013, request for additional information and clarification of the scope of the Petition.<sup>3</sup>

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the "Act"), Petitioners allege that producers/exporters of tetrafluoroethane in the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioners filed this Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and Petitioners have demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department to initiate (see "Determination of Industry Support for the Petition" below).

#### Period of Investigation

The period of investigation ("POI") is January 1, 2012 through December 31, 2012, in accordance with 19 CFR 351.204(b)(2).

---

<sup>2</sup> See Petitioner's October 29, 2013, filing titled, "1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response to CVD Issues Deficiency Questionnaire,"; see also Petitioner's October 29, 2013, filing titled, "1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response to General Issues Supplemental Questionnaire" ("General Issues Supplement"), and Petitioner's November 8, 2013, filing, titled "1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response to Second Antidumping Supplemental Questionnaire".

<sup>3</sup> See Petitioner's November 7, 2013, filing titled, "1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response to Scope Questionnaire,".

### Scope of the Investigation

The product covered by this investigation is tetrafluoroethane from the PRC. For a full description of the scope of the investigation, please see the “Scope of Investigation” in the appendix to this notice.

### Comments on the Scope of the Investigation

During our review of the Petition, we solicited information from Petitioners to ensure that the proposed scope language is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department’s regulations<sup>4</sup>, we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by December 22, 2013, which is 20 calendar days from the signature date of this notice. All comments must be filed on the record of the CVD investigation, as well as the concurrent AD investigation.

### Filing Requirements

All submissions to the Department must be filed electronically using Enforcement & Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“IA ACCESS”). An electronically filed document must be received successfully in its entirety by the Department’s electronic records system, IA ACCESS, by 5 pm on the due date. Documents excepted from the electronic submission requirements must be filed manually (i.e., in paper form) with the Enforcement & Compliance’s APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue NW, Washington, DC

---

<sup>4</sup> See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

20230, and stamped with the date and time of receipt by the deadline established by the Department.<sup>5</sup>

### Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on October 22, 2013, we invited the Government of the PRC (“GOC”) for consultations regarding the CVD petition. On November 28, 2013, the GOC filed written comments with the Department with regard to the CVD petition.<sup>6</sup>

### Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

---

<sup>5</sup> 19 CFR 351.303(b)(1). Information on help using IA ACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

<sup>6</sup> See Memorandum to The File, from Katie Marksberry, Case Analyst, Re: Countervailing Duty Petition on 1,1,1,2 Tetrafluoroethane from the People’s Republic of China: Comments from the Government of the People’s Republic of China Regarding the Petition, dated December 2, 2013.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,<sup>7</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>8</sup>

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that tetrafluoroethane, as defined in the

---

<sup>7</sup> See section 771(10) of the Act.

<sup>8</sup> See USEC, Inc. v. United States, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing Algoma Steel Corp., Ltd. v. United States, 688 F. Supp. 639, 644 (CIT 1988), aff’d 865 F.2d 240 (Fed. Cir. 1989)).

scope of the investigation, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.<sup>9</sup>

On November 1, 2013, the Department extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 702(c)(4)(D) of the Act, because it was “not clear from the Petitions whether the industry support criteria have been met....”<sup>10</sup>

On November 7, 2013, we issued polling questionnaires to all known producers of tetrafluoroethane identified in the Petition and by the ITC. We requested that each company complete the polling questionnaire and certify its response by the due date specified in the cover letter to the questionnaire.<sup>11</sup>

Our analysis of the data we received in the polling questionnaire responses indicates that the domestic producers of tetrafluoroethane who support the Petition account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.<sup>12</sup> Accordingly, the Department determines that the industry support requirements of section 702(c)(4)(A) of the Act have been met. Therefore, the Department determines that Petitioner filed this Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has

---

<sup>9</sup> See Countervailing Duty Investigation Initiation Checklist: 1,1,1,2-Tetrafluoroethane from the People’s Republic of China (“Initiation Checklist”), at Attachment II, Analysis of Industry Support for the Petitions Covering 1,1,1,2-Tetrafluoroethane from the People’s Republic of China (“Attachment II”). This checklist is dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit (“CRU”), Room 7046 of the main Department of Commerce building.

<sup>10</sup> See Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty and Countervailing Duty Petitions: 1,1,1,2-Tetrafluoroethane From the People’s Republic of China, 78 FR 66894, 66895 (November 7, 2013).

<sup>11</sup> For a detailed discussion of the responses received, see Initiation Checklist, at Attachment II. The polling questionnaire and questionnaire responses are on file electronically via IA ACCESS and can also be accessed through the CRU.

<sup>12</sup> See Initiation Checklist, at Attachment II.

demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department initiate.<sup>13</sup>

### Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

### Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>14</sup>

Petitioner contends that the industry’s injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; decline in U.S. sales; and decline in financial performance.<sup>15</sup> We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.<sup>16</sup>

---

<sup>13</sup> Id.

<sup>14</sup> See General Issues Supplement, at 5-6 and Exhibit 5.

<sup>15</sup> See Volume I of the Petition, at 4-13 and Exhibits I-5 and I-8 through I-10; see also General Issues Supplement, at 5-6 and Exhibits 4 and 5.

<sup>16</sup> See Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering 1,1,1,2-Tetrafluoroethane from the People’s Republic of China.

### Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

The Department has examined the Petition on tetrafluoroethane from the PRC and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether producers/exporters of tetrafluoroethane in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see the CVD Initiation Checklist which accompanies this notice.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of six alleged programs. For the other three programs alleged by Petitioners, we have determined that the requirements for initiation have not been met. For a full discussion of the basis for our decision to initiate or not initiate on each program, see the CVD Initiation Checklist.

### Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports during the POI (i.e., calendar year 2012) under the following Harmonized Tariff Schedule of the United States numbers: 2903.39.2020. We intend to release the CBP data under Administrative Protective Order (“APO”) to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments



regarding the CBP data and respondent selection within seven calendar days of release of this data. We intend to make our decision regarding respondent selection within 20 days of publication of this Federal Register notice.

#### Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at <http://enforcement.trade.gov/apo/index.html>.

#### Distribution of Copies of the CVD Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the GOC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

#### ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

#### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of subsidized tetrafluoroethane from the PRC materially injure, or threaten material injury to, a U.S. industry.<sup>17</sup> A negative ITC determination will result in the investigation being terminated.<sup>18</sup> Otherwise, the investigation will proceed according to statutory and regulatory time limits.

#### Submission of Factual Information

---

<sup>17</sup> See section 703(a)(2) of the Act.

<sup>18</sup> See section 703(a)(1) of the Act.

On April 10, 2013, the Department published Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule, 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)-(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to this investigation. Please review the final rule, available at <http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information in these investigations.

#### Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in AD and CVD proceedings.<sup>19</sup> The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under section 19 CFR 351.408(c), or to measure the adequacy of remuneration under section 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Review Extension of Time Limits; Final Rule, available

---

<sup>19</sup> See Extension of Time Limits; Final Rule, 78 FR 57790 (September 20, 2013).

at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this segment.

#### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>20</sup> Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD or CVD investigations or proceedings initiated on or after August 16, 2013, including this investigation.<sup>21</sup> The formats for the revised certifications are provided at the end of the Final Rule. The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

---

Paul Piquado  
Assistant Secretary  
for Enforcement & Compliance

December 2, 2013  
Date

---

<sup>20</sup> See section 782(b) of the Act.

<sup>21</sup> See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings, 78 FR 42678 (July 17, 2013) (“Final Rule”).

## **Appendix**

### **Appendix I**

#### **Scope of the Investigation**

The product subject to this investigation is 1,1,1,2-Tetrafluoroethane, R-134a, or its chemical equivalent, regardless of form, type, or purity level. The chemical formula for 1,1,1,2-tetrafluoroethane is  $\text{CF}_3\text{-CH}_2\text{F}$ , and the Chemical Abstracts Service (“CAS”) registry number is CAS 811-97-2.

1,1,1,2-Tetrafluoroethane is sold under a number of trade names including Klea 134a and Zephex 134a (Mexichem Fluor); Genetron 134a (Honeywell); Suva 134a, Dymel 134a, and Dymel P134a (DuPont); Solkane 134a (Solvay); and Forane 134a (Arkema). Generically, 1,1,1,2-tetrafluoroethane has been sold as Fluorocarbon 134a, R-134a, HFC-134a, HF A-134a, Refrigerant 134a, and UN3159.

Merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) at subheading 2903.39.2020. Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.